

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JUN 30 2006

DAVID J. MALAND, CLERK
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FINISAR CORPORATION, A
DELAWARE CORPORATION

* DOCKET 1:05CV264

V.

THE DIRECTV GROUP, INC.,
A DELAWARE CORPORATION;
DIRECTV HOLDINGS, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY; DIRECTV
ENTERPRISES, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY; DIRECTV OPERATIONS
LLC, A CALIFORNIA LIMITED
LIABILITY COMPANY; DIRECTV,
INC., A CALIFORNIA
CORPORATION; AND HUGHES
NETWORK SYSTEMS, INC., A
DELAWARE CORPORATION

* JUNE 21, 2006

* 4:16 P.M.

* BEAUMONT, TEXAS

VOLUME 1 OF 1, PAGES 1 THROUGH 34

REPORTER'S TRANSCRIPT OF
JURY TRIAL EXCERPT
DIRECT EXAMINATION OF ROY GRIFFIN BY MR. GERMER

BEFORE THE HONORABLE RON CLARK
UNITED STATES DISTRICT JUDGE

ATTORNEYS OF RECORD:

FOR THE PLAINTIFF:

C.J. VEVERKA
CHARLES L. ROBERTS
KIRK R. HARRIS
LARRY R. LAYCOCK
DAVID R. TODD
MARK W. FORD
DAVID R. WRIGHT
WORKMAN, NYDEGGER & SEELEY
1000 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UTAH 84111

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FOR THE PLAINTIFF (CONT'D):

LAWRENCE L. GERMER
H. CRAIG HALL
GERMER GERTZ
550 FANNIN ST., SUITE 500
BEAUMONT, TEXAS 77701

FOR THE DEFENDANTS:

J. THAD HEARTFIELD, JR.
HEARTFIELD & MCGINNIS
2195 DOWLEN ROAD
BEAUMONT, TEXAS 77706

VICTOR G. SAVIKAS
STEVEN J. CORR
LOUIS L. TOUTON
MARSHA E. MULLIN
ALLEN JANSEN
GREG CASTANIAS
MARIA K. NELSON
KEVIN MCBRIDE
JONES DAY - CALIFORNIA
555 S. FLOWER STREET, 50TH FLOOR
LOS ANGELES, CALIFORNIA 90071

PROCEEDINGS REPORTED USING COMPUTERIZED STENOGRAPHY;
TRANSCRIPT PRODUCED VIA COMPUTER-AIDED TRANSCRIPTION.

1 [COURT REPORTER'S NOTES FINISAR V.

2 DIRECTV\GRIFFIN'S 6-21 TESTIMONY, 4:16 P.M., WEDNESDAY,
3 JUNE 21, 2006, BEAUMONT, TEXAS, JUDGE CLARK PRESIDING.]

4 [OPEN COURT, ALL PARTIES PRESENT, JURY PRESENT.]

5 THE COURT: You recall, sir, you are still under
6 oath.

7 THE WITNESS: Yes, sir.

8 DIRECT EXAMINATION OF ROY GRIFFIN

9 BY MR. GERMER:

10 Q. Would you state your full name once again for the record,
11 please?

12 A. Roy Allen Griffin, III.

13 Q. Mr. Griffin, the jury has been hearing the last day or
14 so, in effect, comparisons between the '505 patent and what is
15 called prior art. We're now going back to the infringement
16 case; so, we're going to be talking about, as you talked about
17 before, the '505 patent and the question about whether or not
18 what DIRECTV does infringes. Is that correct?

19 A. That's right.

20 Q. Were you in attendance here in this courtroom when
21 Dr. Rinard testified?

22 A. Yes, I was.

23 Q. And were you in attendance in the courtroom when
24 DIRECTV's engineers testified several days ago?

25 A. Yes.

1 Q. I've got a couple of general questions for you. Did you
2 get the impression that Dr. Rinard was stating, in part, that
3 the '505 patent does not involve satellite television?

4 A. I did get that impression from him.

5 Q. Well, do you agree with his contention that it doesn't
6 involve satellite television?

7 A. No, not at all.

8 Q. Could you explain that?

9 A. Well, the patent itself speaks of a broadcast system and
10 broadcast by satellite; and you can see lots of references in
11 this specification of the '505 patent that relate to
12 television, as well. So, it would be a natural mix of
13 broadcasting and television from the specification to lead us
14 to a place where we would consider that television would be
15 part of what you were interested in in this patent.

16 Q. Let me direct your attention to Plaintiff's Exhibit 2 at
17 Column 16. Can you identify this as a portion of the '505
18 patent?

19 A. Yes. I do see that.

20 Q. And do you see at the top where it talks about video
21 programming?

22 A. Yes, that's right.

23 Q. And without going through this complete subject, can you
24 see at the bottom it goes off the page and continues on to the
25 next page?

1 A. Right. Columns 16 and 17 both deal quite a bit with
2 video and the way that video is handled.

3 Q. And when it is talking about video programming, is that
4 the same as television programming?

5 A. Yes, essentially the same.

6 Q. Now, is this the only place in the '505 patent that talks
7 about video or television programming?

8 A. No. There are a number of places in the patent where it
9 talks about video and television programming and -- as part of
10 this transmission system.

11 Q. I think I heard Dr. Rinard compare the '505 patent to the
12 internet. Did you hear him make that statement?

13 A. Yes, I did.

14 Q. Could you comment on that?

15 A. Well, I think the relationship between this patent and
16 the internet is much more tenuous than the relationship between
17 this patent and, say, satellite television.

18 The internet is a query system, like is shown in
19 the prior art examples that are in the '505 patent where you
20 ask for something and then you get something back; and it has
21 to individually process all of the requests.

22 Here we're talking about a broadcast system, much
23 like DIRECTV, where you are broadcasting information to a great
24 number of subscribers all at one time.

25 Q. All right. Thank you.

1 As you were listening to Dr. Rinard, do you recall
2 how many times he referred to technical documents of DIRECTV to
3 justify or support his conclusions?

4 A. I think maybe once or twice.

5 Q. Do you recall him ever quoting or using testimony from
6 the DIRECTV engineers to support his conclusions or opinions?

7 A. I don't recall that, no.

8 Q. Were you surprised by this?

9 A. Well, I was somewhat because it would seem that when you
10 are putting together an infringement or a non-infringement
11 case, you would want to be able to rely on documents that would
12 support that case or rely on the testimony of the engineers
13 that are actually part of DIRECTV. So, it did surprise me a
14 bit.

15 Q. Did you, in fact, listen to DIRECTV's engineers testify
16 about their own system, the DIRECTV system?

17 A. Yes, here in this proceeding I did.

18 Q. And did you hear Dr. Rinard talk about the DIRECTV
19 system?

20 A. Yes.

21 Q. What did you conclude from listening to that testimony
22 compared to yours?

23 A. Well, I was really struck by the fact that there is a lot
24 of similarity. When I was discussing the system with you-all,
25 I showed diagrams that were almost identical or, if not

1 identical, they had the same concepts as what was shown to you
2 by the engineers and also by Dr. Rinard. So, there is a lot
3 about this technology that we all agree on.

4 Q. All right. Thank you very much.

5 Do you recall that Dr. Rinard put up at one point a
6 chart where he had eight points on there that he said showed
7 there was no infringement?

8 A. Yes, I do.

9 MR. GERMER: I'd like for that to come up on the
10 screen.

11 BY MR. GERMER:

12 Q. Is that the chart that you recall that Dr. Rinard used?

13 A. That's -- yes, that's correct.

14 Q. Now, do you agree with these reasons that Dr. Rinard sets
15 forth for saying that there's no infringement?

16 A. No, not at all.

17 Q. Now, what I want to do is quickly address each one of
18 these points and have you basically explain to the jury why
19 Dr. Rinard is wrong. I'm going to start with Number 1 at the
20 top. It says, "channels, not indexes."

21 Now, does DIRECTV use indexes or channels?

22 A. Well, quite frankly, DIRECTV uses both. It does use
23 channels, but it uses indexes in order to organize the
24 information that it's going to transmit on those channels. So,
25 the answer is yes. Channels, yes. Indexes, yes. And there's

1 no incongruity in that. There is no reason why that shouldn't
2 be.

3 Q. Well, he's setting it up -- Dr. Rinard is setting it up
4 as if it is a question of either/or, channels or indexes. Is
5 that accurate?

6 A. No, it is not. It is not a matter of channels or
7 indexes. Channels certainly can be there, and indexes are used
8 to get to the information in the channels.

9 Q. Now, when we're talking about indexes, are we talking
10 about the program guides?

11 A. We're talking about the program guides, yes, because
12 those provide all the information that the subscriber needs to
13 be able to get to the information that he needs, the programs
14 he wants to watch.

15 Q. Is it your opinion that SCIDs, transponder numbers, and
16 satellite numbers are parts of the index that DIRECTV uses?

17 A. Yes.

18 Q. And is it your opinion that this same information is
19 transmitted in DIRECTV's program guide?

20 A. Yes, it is.

21 Q. I want to direct your attention to Plaintiff's
22 Exhibit 612 at DTVI 14416. This is actually an exhibit to the
23 deposition of a John Godwin in an International Trade
24 Commission proceeding. If we've got it up there with the
25 highlighted part, could you read that to the jury and explain

1 what it says?

2 A. Under B it says, "SCID index (to address the PIP map,
3 which is a list of PIP SCIDs)." And then you can see where it
4 says "SCID index" in the little chart there, as well.

5 Q. All right. Let me direct your attention to the
6 deposition of Robert Arsenault that was taken February 10th,
7 2006. Were you present at his deposition?

8 A. Yes, I was.

9 Q. I want to show you from his deposition page 21, lines 8
10 through 10. Could you read that and comment on that?

11 A. The question is, "So, what is the index that you are
12 referring to in that answer?"

13 And he answers, "That was the transponder index."

14 So, now we've seen actually two references. One
15 talks about the SCID as an index. Now we've seen something
16 that talks about this transponder as an index, as well.

17 Q. Let me direct your attention to another DIRECTV
18 specification. This is Plaintiff's Exhibit 705 at page 13.
19 This is dealing with set-top boxes. Will you please read the
20 highlighted portion of that exhibit?

21 A. Here, at 4.10.2, it says "Satellite Index"; and then it
22 says, "The satellite index is defined by the following list."
23 And you can see satellite identifiers on the left, which
24 satellite it's talking about. And this is a place where they
25 are talking about a satellite index and a satellite I.D. being

1 a satellite index.

2 Q. So, by looking at just these documents from DIRECTV, what
3 can you tell the jury about whether DIRECTV uses indexes, by
4 their own terms, to organize its database?

5 A. I conclude they do. They use -- by their own terms, they
6 are using indexes both in the satellite index, the transponder
7 index, and the SCID index.

8 Q. So, then, let's go back to Dr. Rinard's chart. Is his
9 first point accurate?

10 A. No, it's not accurate.

11 Q. Can we, then, cross that out? Would that be okay?

12 A. Yes. That would be a good idea.

13 Q. All right. We're going to cross out the next one, too.
14 We'll get there but...

15 All right. Well, let's go to the next one and see
16 if we can cross it out.

17 The second point is he says that the television
18 guide has no scheduled transmission time. You see that up
19 there, I'm sure.

20 A. Yes, I do.

21 Q. Do you agree with that conclusion?

22 A. No, I don't.

23 Q. Why not?

24 A. Well, first of all, the DIRECTV documentation talks about
25 how they build a new schedule every 30 minutes so that they can

1 update their program guide. And even Dr. Rinard refers to
2 something as a scheduled update time.

3 To me, a scheduled update time is what he's talking
4 about as a scheduled transmission time. It is just another way
5 of saying it.

6 Q. And to remind the jury, this guide, is it transmitted
7 every 30 minutes, a new guide?

8 A. A new guide is built and transmitted every 30 minutes,
9 and then it is transmitted every 4 seconds during that
10 30-minute time period between those two 30-minute intervals.

11 Q. Okay, thanks.

12 I want to direct your attention to the deposition
13 of Robert Arsenault at page 10, line 16 to 20. Can you read
14 that, please, to the jury?

15 A. It says, "And the next field over, XMIT equals that long
16 number. What is that field used for?"

17 And his answer is, "It is the transmission time for
18 putting into activity this stream list, and that long number is
19 a Greenwich timestamp."

20 Q. Now, that's a little complicated. What does that mean?

21 A. Yeah, it is a little complicated. But what it means is
22 they have a timestamp on this stream list that indicates the
23 transmission time for putting this program guide into
24 activation.

25 Q. All right. Thank you.

1 Now, assume for a moment that assigning an updated
2 time and then transmitting it a short time later is not the
3 same thing as a scheduled transmission time. Does that mean
4 that DIRECTV does not infringe?

5 A. No, it doesn't.

6 Q. Why not?

7 A. Because under the doctrine of equivalents, there will be
8 substantial similarity --

9 MR. TOUTON: Objection, your Honor. This goes
10 beyond the scope of his expert report and also beyond the scope
11 of DIRECTV's case-in-chief.

12 MR. GERMER: Your Honor, if I could --

13 THE COURT: Well, he -- the statement he has made
14 so far is the same as made before; so, I'll allow it. However,
15 I think we've discussed before that that's basically what his
16 report says.

17 MR. GERMER: Yes, sir.

18 THE COURT: That's about the limit of what his
19 report said. That's the limit of what we've had so far --

20 MR. GERMER: Yes, sir.

21 THE COURT: -- as far as equivalents.

22 MR. GERMER: And I was simply going to ask him to
23 explain why there would be equivalents.

24 Your Honor, that is covered in his report.

25 Actually, it was covered in Dr. Rinard's report. It was

1 covered generally in his opening up testimony.

2 THE COURT: You can ask the next question; and it
3 starts getting into it, I mean, you can --

4 MR. TOUTON: Your Honor --

5 THE COURT: We understand the limitations that are
6 in the report.

7 MR. TOUTON: I am concerned that I heard this
8 question and answer to be directed to a particular element
9 which was not in his report.

10 THE COURT: Go ahead with your next question,
11 counsel.

12 MR. GERMER: Yes, sir.

13 BY MR. GERMER:

14 Q. Could you explain, under the doctrine of equivalents, why
15 it wouldn't make any difference?

16 A. Having a scheduled update time and a --

17 THE COURT: Okay. That is going to a specific
18 claim, and I will sustain the objection.

19 MR. GERMER: Your Honor, we had -- on four of these
20 points -- Dr. Rinard presented eight points; and, you know, he
21 puts them up here. He talks about not infringing so --

22 THE COURT: Okay. Unfortunately -- and we've gone
23 through this before -- Mr. Griffin did not go into this in his
24 report. He chose to limit this area of his report to one
25 paragraph of a couple sentences. And, basically, if he had

1 wanted to go into that or had thought of it when he was writing
2 his report, he could have developed it.

3 I've allowed him to say what was in his report.
4 He's done that once before. I'll allow him to say it again.
5 But I don't think it is proper for him now, after Dr. Rinard
6 has been dismissed, to come out with something entirely new
7 that he had never put in his report before and, as far as I
8 know, was never stuck in his deposition, either. That's the
9 basis for my ruling under the Rules of Procedure and the
10 scheduling rules and Orders of the Court.

11 MR. GERMER: Thank you, your Honor. And I will
12 then delete -- because I had some other more detailed
13 references on two or three other points.

14 THE COURT: Okay.

15 MR. GERMER: And I'll delete that. But I would
16 tell the Court and opposing counsel. Actually, on this
17 particular one, this was covered in his report. As the Court
18 will recall, there was a supplemental report. And part of it
19 was struck; part of it was not struck. The part of the report
20 that was not struck included references to why there is
21 equivalents in this particular situation. And I think it
22 refers specifically to building these guides, and the verbiage
23 is used. This is the only one of the matters I was going to
24 bring up that is covered in the supplemental report.

25 THE COURT: I'll sustain the objection.

1 BY MR. GERMER:

2 Q. Based upon your testimony, then, about --

3 MR. GERMER: If we can go back to Dr. Rinard's
4 list.

5 BY MR. GERMER:

6 Q. Based upon your testimony, then, and your difference with
7 Dr. Rinard, shouldn't we strike not only Number 1 but also
8 strike Number 2?

9 A. Yes.

10 Q. Thank you.

11 Now, going into the third point, which is
12 Dr. Rinard said there's no indexes embedded in the TV
13 programming, what do you conclude about that?

14 A. I conclude that that's not correct, either.

15 Q. And could you explain that, please?

16 A. Really, Number 3 harkens from Number 1. Since Dr. Rinard
17 doesn't believe there are indexes, then he is saying, well, you
18 can't be possibly embedding indexes in TV programming. We've
19 already demonstrated here in our discussion of Number 1 that
20 SCIDs are indexes and SCIDs are embedded in television
21 programming.

22 Q. So, then, do you conclude that Dr. Rinard is wrong in
23 this Number 3?

24 A. Yes, I do.

25 Q. Then would it be appropriate to strike it out?

1 A. Yes.

2 MR. GERMER: Do that, please.

3 BY MR. GERMER:

4 Q. Looking at Number 4, Dr. Rinard says "TV has top
5 priority, but repeats less frequently."

6 Now, I want to direct your attention to Plaintiff's
7 Demonstrative Exhibit Number 27. Do you recognize this as
8 being the requirement of Step E in Claim 16, which is what
9 we're talking about?

10 A. Yes, I do.

11 Q. And do you see over there on the right, we have the step
12 plus the Court's construction?

13 A. Yes, I do.

14 Q. Using that as necessary, could you explain to the jury
15 why Dr. Rinard is wrong about saying that TV has top priority
16 but repeats less frequently?

17 A. This claim is talking about priority in relation to
18 repetition rates, priority in terms of repetition rate. What
19 we are talking about is the fact that information that needs to
20 be received more frequently in a set-top box has to be then
21 prioritized higher so that it is transmitted more frequently so
22 that the set-top box will get it more frequently.

23 Now, conversely, if information is not needed in
24 the set-top box to be provided so frequently, then it doesn't
25 have to be prioritized so highly. It can be prioritized at a

1 low priority and repeated less frequently.

2 So, the concept here in this patent -- in this
3 claim of the patent is prioritize those things that the box
4 needs to receive repeatedly at a repetition rate that's high if
5 it needs to be received quickly or often and prioritize
6 information that doesn't need to get to the set-top box on an
7 interval basis at a lower priority.

8 Now, what we have here in the DIRECTV system is
9 television programming is not repeated frequently. It is not
10 that it doesn't need to be received, but it doesn't need to be
11 repeated often.

12 In terms of the claim, we're talking about groups
13 of information, tiers, prioritized according to how frequently
14 they need to go out, how frequently they need to be received.
15 And television programming simply does not need to go out with
16 the frequency that, say, program guides need to, especially the
17 master program guide that gives you all the information you
18 need every four seconds to acquire the programs in the first
19 place.

20 Q. All right. Thank you.

21 Now let me direct your attention to Plaintiff's
22 Exhibit 2. Do you recognize this document, which is actually
23 part of the '505 patent itself?

24 A. Yes.

25 Q. And I want to direct you to columns 14, lines 11 and 12

1 that have now been highlighted on the screen. Could you read
2 that for the jury, please, the highlighted portion?

3 A. This is what I was talking about before. The
4 prioritization that we're talking about in this claim is
5 "prioritized in accordance with actual or expected subscriber
6 usage" the information needing to get to the box and that
7 information needing to get to it at a certain repetition rate.
8 And, so, that's what we're talking about here.

9 Q. Well, Dr. Rinard says television has the higher priority.

10 A. Well, he's mistaken. He seems to think that priority is
11 related to something other than the repetition rate priority
12 that we're talking about here, and he's just misconstrued the
13 claim language. And the priority that we're talking about here
14 is priority in relation to repetition rate, that priority which
15 is established by the need to have something repeated often.

16 And certainly television programming is repeated
17 much less often. In fact, turnaround programming isn't
18 repeated at all. So, television programming is much lower
19 priority in terms of repetition rate than program guides and
20 other information.

21 Q. Well, then, let's go back to his chart, Dr. Rinard's
22 chart. Would it be appropriate, then, to strike out the fourth
23 line about TV having top priority?

24 A. Yes.

25 Q. Thanks.

1 Let's go to the fifth point where Dr. Rinard says
2 there's no timestamps as required by Claims 17 and 39. And
3 this point, of course, just deals with 17 and 39. What have
4 you been able to conclude here?

5 A. Well, I've been able to conclude that certainly DIRECTV
6 has timestamps; and looking at the Claims 17 and 39, those
7 timestamps are fully in compliance with the requirements of
8 those claims.

9 Q. Mr. Griffin, assuming for a moment that Claims 17 and 39
10 require that there is timestamp information in the indexes that
11 tell you when program guide information will arrive, does that
12 mean that DIRECTV does not infringe?

13 A. No.

14 Q. And why not? Just answer generally under the Court's
15 instructions why not.

16 A. Even if the program guide required time stamps, what they
17 are doing is substantially similar.

18 MR. TOUTON: Objection, your Honor.

19 THE COURT: Okay. And I will sustain that.

20 Ladies and gentlemen, you will disregard any
21 reference to "substantially similar." This is not properly set
22 out in the report as it was supposed to be.

23 Mr. Griffin, you've heard my rulings. Stick to
24 what was in your report, and stick to what we're going on here.
25 Do not keep trying to get into similar, whatever. That is not

1 permissible.

2 MR. GERMER: And, your Honor, I apologize. I
3 thought the Court had ruled we could talk generally but I
4 couldn't go into specifics.

5 THE COURT: Well, generally about all of them but
6 not on any particular claim.

7 MR. GERMER: Okay.

8 THE COURT: I mean, generally -- he's made his
9 general statement. At the end if you want to talk about
10 generally, that's fine, but not in regards to a specific claim
11 as there was no reference to that in the original report. It
12 is not bring it up when there has been no chance to go into
13 that.

14 MR. GERMER: Thank you, your Honor. I'll try to
15 get it right.

16 BY MR. GERMER:

17 Q. Based on what you've told us about your evaluation of the
18 no timestamps, would it be appropriate, then, to strike that
19 contention of Dr. Rinard?

20 A. Yes.

21 MR. GERMER: And can we do that?

22 BY MR. GERMER:

23 Q. Going to the next point, Number 8, which is "no reserved
24 bandwidth," do you agree with Dr. Rinard's contention in this
25 regard?

1 A. No, I don't.

2 Q. I want to direct your attention to Plaintiff's
3 Demonstrative Exhibit 34. Do you recognize this as the first
4 element of Claim 22, which is actually what we're talking about
5 here, along with the Court's construction?

6 A. Yes.

7 Q. Now, using the claim and the Court's construction, can
8 you describe why you don't agree with Dr. Rinard on this
9 bandwidth issue?

10 A. Dr. Rinard's opinion seems to be based on the assumption
11 that setting aside bandwidth for transmission requires not only
12 that you set it aside but that you set it aside exclusively and
13 use it for the transmission that you have set aside for.

14 But if you look at the claim language and you look
15 at the Court's claim construction, there is no such language
16 that would indicate that.

17 Q. So, then, as you would understand this claim, is there
18 bandwidth reserved in accordance with these claims?

19 A. Yes.

20 Q. What about the argument that DIRECTV does reserve
21 bandwidth but they might use a little bit more or a little bit
22 less perhaps than they had planned?

23 A. Again, that's going to the same issue about whether the
24 exclusive -- setting aside is an exclusive thing. And they may
25 have equipment that would cause the bandwidth allocations to

1 change ever so slightly over periods of time or in real-time to
2 handle peak loads, but that doesn't get around the fact that
3 they have still set aside bandwidth for that purpose.

4 Q. I want to direct you to the deposition of Richard
5 Purpura, one of the DIRECTV engineers; and I want to direct
6 your attention to page 66 at lines 18 to 24. Could you read
7 that for the jury, please?

8 A. The question is, "Well, that describes for me how CNN
9 gets assigned to a transponder. What about all the other
10 content that is broadcast?"

11 And Mr. Purpura answers, "The bit rate allocation
12 process allocates all of our bandwidth, or at least most of our
13 bandwidth, to all of the services that we carry."

14 Q. And then in the same deposition, I want to direct your
15 attention to page 74, lines 22 and 23. Can you read that for
16 the jury, please?

17 A. It says, "The bit rate allocation process has allocated a
18 particular transponder for each service."

19 Q. Now, in addition to what you've said about channels, what
20 does this tell us?

21 A. What this is talking about is, there's a whole group of
22 channels that are dedicated to a transponder. Now, in this
23 case the transponder doesn't have this borrowing idea in place
24 where somebody could take a little bandwidth from one
25 transponder and use it on another transponder.

1 So, here we have an allocation process that
2 allocates bandwidth on a transponder to services in just the
3 manner that the claim requires. Even if you take into
4 consideration a thought that it has to be set aside
5 exclusively, in this case it is.

6 Q. So, then, does DIRECTV allocate bandwidth by channel?

7 A. They do.

8 Q. Do they allocate bandwidth by transponder?

9 A. They do.

10 Q. Would it then be appropriate to strike out Dr. Rinard's
11 sixth point when we get it back up on the...

12 A. Yes.

13 Q. Thank you.

14 Going to the seventh argument that Dr. Rinard
15 throws out, he says that there's no DIRECTV set box that
16 receives all transmitted data packets.

17 I want to direct your attention to Plaintiff's
18 Demonstrative Exhibit 39. Do you recognize this as the second
19 element of Claim 26, and Claim 26 is the claim that his
20 argument is directed to?

21 A. Yes.

22 Q. Using that claim language as you need to, could you
23 explain to the jury your opinion about Dr. Rinard's testimony?

24 A. Claim 26 has a lot to do with what the subscriber station
25 does with the packets that it receives and how it goes about

1 filtering those packets and stores in filter lists, some filter
2 data, and then downloads or forwards data packets from the
3 buffer to a predefined destination. The clear intent here is
4 to define more succinctly how the packets are dealt with.

5 But the second part here says "whereby each
6 subscriber station receives all transmitted data packets."
7 What Dr. Rinard seems to be saying is that word "all" is not
8 fulfilled, and here's why. He's saying that sometimes DIRECTV
9 is transmitting some information to San Francisco, like their
10 local San Francisco stations; and he's transmitting other
11 information to New York City for New York City's stations. And
12 people in New York City, obviously, don't get the transmissions
13 that go to San Francisco; and the San Franciscans don't get the
14 transmissions that go to New York City. So, how could the box
15 receive all of DIRECTV's transmitted data?

16 Well, the problem with that is what this claim is
17 talking about is receiving all transmitted data packets that
18 are transmitted to the set-top box intended for that set-top
19 box. The people in San Francisco certainly get all of the
20 information that's transmitted in San Francisco, and the people
21 in New York get all of the information that's transmitted in
22 New York.

23 So, I think he's misinterpreted this to think that
24 you can get around the patent by simply transmitting something
25 to Timbuktu where no subscriber station is going to receive it

1 and now you are no longer infringing the claim. And I think it
2 is a misreading of the claim.

3 Q. Can I assume from what you said that you disagree with
4 him, then, on this point?

5 A. Yes.

6 Q. Would it be appropriate, then, to strike out Number 7?

7 A. Yes.

8 Q. All right. Going to the eighth and last point,
9 Dr. Rinard says that there is no reserved transmission times,
10 and he's referring there to Claim 44. What do you conclude as
11 to his statement here?

12 A. Well, that is not true on the face of it. DIRECTV
13 reserves transmission times for programming. He seems to have
14 two arguments. One argument is a little convoluted and I don't
15 know if I will be saying it exactly correctly, but this is how
16 I understood it. He seemed to say that if you are scheduling
17 something for transmission on Disney at 7:00, you couldn't
18 schedule for transmission at 7:00 on some other channel. Now,
19 that one doesn't make a lot of sense; so, I don't know if I
20 just misinterpreted it.

21 But the second thing that he is saying is if I'm
22 scheduling programs for transmission at 7:00, then if a program
23 gets preempted, it might be possible for it to be preempted.
24 So, now I'm not reserving transmission time at that time
25 because, you know, the President came on and they were really

1 trying to do "Larry King Live" but they had to preempt "Larry
2 King Live" and then put the President on. And I just don't see
3 that to be reserving transmission times in the context of this
4 claim in a reasonable interpretation of this claim.

5 Q. All right. Then would it be appropriate to cross out
6 this last one, "no reserved transmission times"?

7 A. Yes.

8 Q. And since we've crossed them all out, would it be
9 appropriate to go back to the top and cross out the "not"?

10 A. Yes, because these are reasons why DIRECTV does infringe,
11 that all of these arguments against infringement are just not
12 valid.

13 Q. Thank you.

14 One question, then, about the doctrine of
15 equivalents. As you have testified before, would the doctrine
16 of equivalents have application to these claims?

17 A. Yes.

18 Q. Thank you.

19 A couple of questions about noninfringing
20 alternatives. Now, recall that goes to the point of could
21 DIRECTV in 1995 have done something else some other way, did
22 they have some other feasible way to operate without using this
23 patent.

24 Do you recall that you told the jury a few days
25 ago -- well, what did you tell them about whether or not there

1 were any noninfringing alternatives available?

2 A. I told them that I knew of no noninfringing alternatives
3 that would be available at the time.

4 Q. And did you hear Mr. Donaldson talk briefly about
5 noninfringing alternatives during his testimony?

6 A. I did.

7 Q. Did you hear him -- after hearing his testimony, has your
8 opinion changed?

9 A. No, it hasn't at all. I still believe there were no
10 viable noninfringing alternatives in 1995, or even now for that
11 matter.

12 Q. Did you hear Mr. Donaldson say that someone told him that
13 an aperiodic transmission could be a viable noninfringing
14 alternative?

15 A. I heard them say that, yes.

16 Q. And what's your comment there?

17 MR. TOUTON: Objection, your Honor. This goes
18 beyond the scope of his expert report.

19 MR. GERMER: Your Honor, I think the Court ruled on
20 that earlier and said we could go into that briefly.

21 THE COURT: I'll sustain the objection. Limit his
22 testimony to what's in his report.

23 BY MR. GERMER:

24 Q. Mr. Griffin, is it your opinion that DIRECTV has
25 infringed each and every element of each and every claim that

1 we talked about in this case?

2 A. The asserted claims in this case, yes.

3 Q. Thank you very much.

4 CROSS-EXAMINATION OF ROY GRIFFIN

5 BY MR. TOUTON:

6 Q. Mr. Griffin, let me ask you a few questions relating to
7 your testimony just now. Do you agree with Professor Rinard
8 that the '505 patent describes a way to provide an improved
9 internet-like experience through use of broadcast media?

10 A. I don't think so, no, sir.

11 Q. So, you don't agree that it is an improvement over such
12 systems as Prodigy and CompuServe?

13 A. No, I don't believe it is an internet-like service.
14 That's what I don't agree with.

15 Q. Do you consider CompuServe and Prodigy to be
16 internet-like services?

17 A. They are very ancient predecessors.

18 Q. Of the internet?

19 A. Of the internet. I would say that's correct.

20 Q. Okay. And Dr. Levinson's patent was intended, as it
21 states in the patent, as an improvement over those items?

22 A. Yes.

23 Q. Okay. Now, you discussed in your testimony just now a
24 transponder index. Do you recall that? You showed a table.

25 A. Yes.

1 Q. And wasn't that table describing what numbers were
2 assigned to the various transponders and frequencies that
3 DIRECTV uses?

4 A. Now, I'm not sure. Which table were you speaking of?
5 There was a SCID index table.

6 Q. I'm speaking of the transponder index table. Do you
7 recall that table? You just testified about it.

8 A. I don't recall the specific table you are speaking of. I
9 saw a table that was a satellite index table --

10 Q. All right. Let's talk about that.

11 A. -- if that's what you mean.

12 Q. All right. This satellite table -- index table, that was
13 about what satellites DIRECTV had and what numbers were
14 assigned to those satellites; is that correct?

15 A. That's correct.

16 Q. Let me turn, if I could now, to your testimony just now
17 about scheduled transmission times for the program guide. And
18 I think I heard you say that a new program guide is transmitted
19 every 30 minutes. Did you say that?

20 A. What I was saying is that a new program guide needs to be
21 generated every 30 minutes, and then the transmission of that
22 guide will then occur.

23 Q. And that has to occur -- and does that transmission
24 itself occur every 30 minutes?

25 A. It occurs when it is scheduled by the stream list,

1 whenever that time is on the stream list. Now, I don't know
2 what that time might be assigned to be; but it is assigned to
3 be something.

4 Q. Well, isn't it your testimony, Mr. Griffin, that at least
5 some parts of the program guide take many hours to be
6 transmitted?

7 A. That is with the -- with respect to the APG, there can be
8 carousels that take many hours. However, there are also parts
9 of the APG, like the fast-load stream, that also repeat every
10 four seconds, just like the MPG does.

11 Q. But your testimony is that even with respect to these
12 parts of the program guide that take several hours to transmit,
13 that they are transmitted every 30 minutes?

14 A. No, sir. What I'm saying is -- is that the portions of
15 the guide that require transmission -- because there are
16 changes, there are changes in what the transmission is -- those
17 portions will be updated every 30 minutes so that then the
18 transmissions will be accurate from that point.

19 Q. And that transmission could occur many hours later,
20 correct?

21 A. The transmission could occur many hours later, yes.

22 Q. And, indeed, at the time of update, it is not possible to
23 determine when it will be transmitted out into the many hours
24 later?

25 A. I think that is a deterministic value. I think that can

1 be determined. I don't know that I can determine it, but I
2 know the guide driver certainly would be able to determine when
3 that is going to occur.

4 Q. It will determine it several hours from now when it has
5 time to transmit that; isn't that right?

6 A. Well, as I said, it is deterministic. The guide driver
7 certainly at some point in its processing is going to know at
8 what time that transmission is going to take place.

9 Q. All right. Let's talk, if we could, a bit about
10 repetition and priority.

11 MR. TOUTON: And could I have Element E of Claim 16
12 put on the screen?

13 Thank you, Mr. Lodge.

14 And I want to highlight the last two lines and
15 beginning with "wherein" on the previous line.

16 BY MR. TOUTON:

17 Q. Is it your testimony that -- at least the testimony I
18 heard is that your view is that priority has to be judged in
19 terms of the repetition rate. Is that correct?

20 A. Right. That's correct.

21 Q. So that, in your view, what has the most priority is what
22 is repeated most often?

23 A. Well, no. In my view what is repeated most often is
24 repeated most often because it has the highest priority.

25 Q. All right. But isn't it true that to determine the

1 priority, then, you don't just pay attention to the repetition
2 rate; you have to look at expected use by subscribers in the
3 view of the designer of the system?

4 A. Certainly the expected use by subscribers, as we
5 discussed before, is a key way to determine the priority that
6 will be assigned to these pieces of information, these tiers,
7 these groups of data. So, yes, certainly you would look at
8 that.

9 Q. And isn't it also your view that in the DIRECTV system,
10 by your understanding and your opinion, that the turnaround
11 programming that DIRECTV is selling to its subscribers must
12 have the lowest priority?

13 A. It has the lowest priority as regards repetition rate.

14 Q. All right. But --

15 A. See, there can be many priorities in a system; but we're
16 talking about in this claim the repetition rate priority, why
17 you would want to repeat it.

18 Q. In terms of expected usage, isn't it true that it's your
19 opinion that DIRECTV gives the lowest priority in terms of
20 expected usage to turnaround programming?

21 A. In relation to the repetition rate, it is expected that
22 subscribers will not need turnaround programming repeated more
23 often than, say, program guide information. Yes, that's right.

24 Q. So, then, why -- isn't it also true, though, Mr. Griffin,
25 as Professor Rinard explained, that when DIRECTV is forced to

1 make a choice as to what to send, it will send turnaround
2 programming before it will send guide information?

3 A. No, that's not what he said; and that's not really
4 accurate.

5 What he said is that in a place of contention where
6 you have a program guide packet and you have a video packet and
7 only one of those can go out, it will choose the video packet.
8 And that makes perfectly good sense, but it has nothing to do
9 with the repetition rate priority.

10 Q. So, the higher-priority packet, in your view, is the one
11 that is thrown away; and the lower-priority packet is the one
12 that goes out. Is that what you are saying?

13 A. No. We're not talking about at the packet level. If I
14 could use an analogy, because maybe it would make things
15 easier.

16 If you're running a bus route every hour in a town
17 and you run a train through the town and the train runs once a
18 day and the bus route runs every hour and the bus driver is
19 told when you get to a railroad crossing, you yield to the
20 train. That's what Dr. Rinard is basically talking about. You
21 yield to the train -- that that means the train is in a
22 higher-priority repetition rate than the bus route, which is
23 not true.

24 See, the priority that's established for the train
25 to go through has no relationship to this claim language that's

1 dealing with how often the bus goes in its route or how often
2 the train runs. They have no relationship to each other.

3 Q. Will you agree, though, Mr. Griffin, that DIRECTV, when
4 it's forced to make a choice, throws the guide packets away, if
5 it has to, in order to send the video?

6 A. If it has to, it would, yes.

7 Q. All right. Thank you.

8 [EXCERPT OF PROCEEDINGS CONCLUDED.]

9 COURT REPORTER'S CERTIFICATION

10 I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT
11 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS.

12 Christina Bickham
13 CHRISTINA L. BICKHAM, RMR, CRR

JUNE 21, 2006

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